



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

NO. 82-1851

JAMES PENDLETON AND SAMUEL THOMPSON,
Petitioners,

v.

UNITED PARCEL SERVICE AND
TEAMSTERS LOCAL NO. 667,
Respondents.

BRIEF OF RESPONDENT
TEAMSTERS LOCAL 667
IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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Your respondent, Teamsters Local 667, properly known as Highway and Local Motor Freight Employees Local Union No. 667, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, files this its brief in opposition to the petition for

writ of certiorari filed by Petitioners in this cause.

I.

1. This Respondent submits that the issue is, "Did the United States Court of Appeals for the Sixth Circuit err when it affirmed the grant of motions for summary judgment filed by the Defendants."

II.

THE PARTIES

1. This Respondent submits that the petition for certiorari accurately describes the parties in this cause.

III.

STATEMENT IN OPPOSITION TO PETITION FOR CERTIORARI

1. The petition for certiorari was not timely filed.

2. Before commenting on the facts, we deem it necessary to point out an error in the Appendix filed by

Petitioner and attached to the petition for certiorari. In Appendix B, the District Court's Order on Defendants' Motion for summary Judgment, at page 9, a comment of the Court is stated, "Clements was present when the grievance hearings involving Plaintiffs were conducted; he did play an active role in the proceedings, however." The order actually states, "Clements was present when the grievance hearing involving Plaintiffs were conducted; he did not play an active role in the proceedings, however."

Pendleton's grievance was deadlocked at the committee level and was denied when considered by the deadlock panel. The United States Court of Appeals was of the opinion that there had been no claim that the deadlock panel was corrupt. (Appendix A-7) The Court of Appeals

further held that the only evidence offered by the Plaintiffs of corruption in the arbitration process is the double hearsay affidavit of Clements. (Appendix A-7)

We would point out that there is no affidavit of Clements. The only affidavit in opposition to Defendants' motion for summary judgment was that of Alan Chambers, the Plaintiffs' attorney. When Defendants filed their motions for summary judgment and accompanying affidavits, Plaintiffs' attorney called the job steward, James Darrell Clements, and taped the conversation. The gist of the information Plaintiffs' attorney sought to get before the District Court was a statement of a member of the original committee. The means he sought to get this statement before the Court was his own affidavit, in

which he quoted a job steward, who in turn quoted a business agent, who allegedly quoted the member of the committee. None of these quotes come within the exceptions to the hearsay evidence rule and, as stated by the Court of Appeals, would not be admissible at trial and should not be considered on a motion for summary judgment.

IV.

CONCLUSION

We respectfully submit that the petition for certiorari should be denied.

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CERTIFICATE OF SERVICE

I certify that I have this day served three copies of the foregoing brief and opposition to petition for certiorari on Mr. Alan Chambers, Attorney for Petitioners, at his office, 147 Jefferson Ave., Suite 1206, Memphis, Tennessee 38103-2218, and on Mr. Charles Hampton White, Attorney for United Parcel Service, at his office, 18th floor, Third Nat'l Bank Bldg., P.O. Box 2808, Nashville, Tennessee 37219, by U.S. Mail postage prepaid.

Howard R. Paul
HOWARD R. PAUL
June 3, 1983